

REPORTER'S RECORD

74829

VOLUME 58 OF 73 VOLUMESTRIAL COURT CAUSE NO. 20020D00230COURT OF APPEALS NO. 74,829

THE STATE OF TEXAS)	IN THE DISTRICT COURT
)	
v.)	OF EL PASO COUNTY, TEXAS
)	
DAVID RENTERIA)	41ST JUDICIAL DISTRICT

FILED IN
COURT OF CRIMINAL APPEALS

AUG 26 2004

Troy C. Bennett, Jr., Clerk

TRIAL ON THE MERITS

On Wednesday, the 17th day of September 2003, the following proceedings came on to be heard in the above-entitled and numbered cause before the **Honorable Mary Anne Bramblett**, Judge of the 41st Judicial District Court in El Paso County, Texas.

Proceedings reported by computer-aided machine shorthand.

ORIGINAL

A P P E A R A N C E SJAIME ESPARZA, ESQ.

SBOT NO. 06666450

LORI SWOPES, ESQ.

SBOT NO. 00786275

JOHN GIBSON, ESQ.

SBOT NO. 00793803

500 E. San Antonio Rm. 201

El Paso, Texas 79901

(915) 546-2059

ATTORNEYS FOR THE STATE

SCOTT SEGALL, ESQ.

SBOT NO. 17990600

ROBERT RILEY, ESQ.

SBOT NO. 16931100

DANIEL G. MARQUEZ, ESQ.

SBOT NO. 24004795

500 E. San Antonio Rm. 401

El Paso, Texas 79901

(915) 546-8185

ATTORNEYS FOR DEFENDANT

CHRONOLOGICAL INDEX

TRIAL ON THE MERITS

Wednesday, September 17, 2003

PAGE

VOL.

STATE'S WITNESSES

DIRECT

CROSS

VOIR DIRE

VOL.

Objections to Court's Charge

4

58

Court's Ruling

8

58

Charge Read to Jury

11

58

Closing Argument by Mr. Gibson

19

58

Closing Argument by Mr. Riley

29

58

Closing Argument by Mr. Segall

37

58

Closing Argument by Mr. Esparza

54

58

Jury Retired for Deliberations

69

58

Verdict Received

70

58

Jury Polled

70

58

Court Reporter's Certificate

73

58

1 Wednesday, September 17, 2003.

2 (After recess, Defendant present,
3 no Jury, 9:35 a.m.)

4 THE COURT: Has the State had an opportunity to
5 examine the charge of the Court?

6 MS. SWOPES: Yes, Your Honor.

7 THE COURT: Do you have any objections to the
8 charge?

9 MS. SWOPES: No.

10 THE COURT: Has the Defense had an opportunity to
11 examine the charge of the Court?

12 MR. SEGALL: Yes, ma'am.

13 THE COURT: Do you have any objections to the
14 charge?

15 MR. SEGALL: Yes, ma'am. May we dictate them into
16 the record?

17 THE COURT: Yes, you may.

18 MR. SEGALL: In the presence of both the district
19 attorney's office and the Defendant.

20 THE COURT: Yes.

21 MR. SEGALL: Your Honor, our first objection is a
22 directed verdict of not guilty because the State has failed to
23 prove each and every element of the offense.

24 THE COURT: Your motion is denied.

25 MR. SEGALL: Your Honor, we would request that a

1 term, beyond a reasonable doubt, be defined, and suggest to the
2 Court that the definition in *Geesa v. State* would be the proper
3 definition to give. Specifically note to the Court that due
4 process would require the definition be given, that -- under
5 federal, United States Constitution, and therefore we request
6 that a definition of beyond a reasonable doubt be included in
7 this charge.

8 THE COURT: Based on the state of the law at this
9 time, you know that I must deny that request.

10 MR. SEGALL: If I don't object, I waive.

11 Now, Your Honor, we would request that in addition
12 to the lesser-included offense that the Court has included, that
13 the lesser-included offense of murder under felony murder with an
14 application paragraph be submitted to the Jury. We would request
15 that in addition to that, that the law -- that an inference -- a
16 final fact cannot be based upon an inference upon an inference be
17 included in this charge. We would request that the Jury be
18 charged that evidence received -- obtained illegally be not
19 considered by the Jury, specifically drawing the Court's
20 attention to, I believe, our written submitted charge, which
21 requested that if they have a doubt as to whether the officers
22 obtained a free and voluntary consent to the palm print, that
23 they are to discount the palm print and any evidence obtained
24 thereafter, such as the search warrant based thereupon and the
25 results thereof.

1 In support of that argument, we would note to the
2 Court specifically that the officer testified that it was freely
3 and voluntarily obtained, that there was, in fact, an outstanding
4 arrest warrant for the Defendant, that he was therefore in their
5 custody, that they received permission not to execute that
6 warrant, that that warrant was then not executed, the Defendant
7 was told about it, the issue being whether he was told about it
8 prior to being released or whether prior to the consent was given
9 or not. That that is a fact issue that has been raised by the
10 evidence and we request that it be submitted to the Jury, along
11 with requesting that the Court admitted oral statements made by
12 the Defendant at that time, and we would respectfully submit to
13 the Court that the issue of whether or not he was in custody at
14 the time, and since those oral statements were neither recorded
15 nor reduced to writing and signed, that they should have been
16 excluded.

17 And we'd request the Court so instruct the Jury,
18 that if they find that he was in custody at that time pursuant to
19 that arrest warrant, that the statute was not followed, and
20 therefore the evidence obtained as a result of it, including the
21 oral statements, the consent, the palm print, and search of the
22 van, should not be considered by them.

23 The Defense would specifically object to the
24 failure to include those instructions.

25 We would object to the lesser offense being

1 referred to as a lesser offense as that is a comment on the legal
2 effect. In other words, quite clearly, to anyone reading the
3 charge, that that conveys to them the information that they
4 should decide this case on basis of punishment, that if they want
5 to give a greater punishment for this person, then they better
6 not go with a lesser crime.

7 And specifically, I would note to the Court, since
8 the Court -- that during voir dire, the Jury -- I do not believe
9 that the jurors were told about manslaughter, about it being a
10 lesser -- about the range of punishment of it. But by calling it
11 a lesser, then what the Court is informing them is some
12 information that they don't have which may affect their decision
13 as to whether to go with the offense or not. And so we'd request
14 that the word lesser be removed, because lesser is a punishment
15 issue.

16 If I may have one moment.

17 Your Honor, the Defense would request an
18 instruction that any evidence which has been mutilated or
19 destroyed by a party would indicate to the party -- to the Jury
20 that they should hold their -- any inferences drawn from that
21 should be negative to the party having the evidence and who has
22 destroyed it. I do not have the exact language, but I believe
23 that this language is found in civil cases where someone fails to
24 produce evidence that they have or has destroyed evidence that
25 would bear upon the issue. And we would request that this Jury

1 be so instructed, that they are to take as a negative inference
2 and construe against the party that had the information and/or
3 exhibits and/or other evidence and then wilfully destroy it, that
4 they should take a negative inference against that party for
5 having done so.

6 Those are our objections to the charge. Thank
7 you, Your Honor.

8 THE COURT: I'll give the State an opportunity to
9 respond and I'll go subject at a time.

10 Felony murder, the request for the felony murder
11 instruction.

12 MS. SWOPES: There's no evidence suggesting that
13 this is a felony murder. And the way that the indictment reads
14 is murder by causing the death of an individual under six years
15 of age. There's no lesser included of felony murder under that
16 particular form of capital murder.

17 THE COURT: That request for the instruction is
18 denied.

19 The request for the instruction of inference upon
20 inference.

21 MS. SWOPES: It's not proper under the law.

22 THE COURT: Be denied.

23 The instruction regarding the palm print and the
24 outstanding warrant regarding whether or not it was illegally
25 obtained.

1 MS. SWOPES: The state of the evidence at this
2 point is that there was no illegality. The Court has ruled on
3 this issue and determined that the search and consent were all
4 legally and voluntarily obtained. There's no factual dispute in
5 regards to this issue and it should not be submitted to the Jury.

6 THE COURT: Request for the instruction is denied.

7 There has been a request to instruct the Jury that
8 the oral statement should have been excluded if the Defendant was
9 in custody based on an arrest warrant. I'm just trying to
10 paraphrase this as best I can.

11 MS. SWOPES: The evidence clearly shows the
12 Defendant was not in custody when he made those oral statements
13 on November 20th of 2001. He was, in fact, released at his own
14 home and advised of the warrants after everything had been --
15 he'd been spoken to and the consent. There's no factual dispute
16 in the evidence.

17 THE COURT: That request will be denied.

18 And the request to strike the words, lesser
19 offense, regarding the manslaughter charge.

20 MS. SWOPES: The lesser offense refers to an
21 offense wherein the elements are less, meaning if it's a murder
22 of a child under six, the lesser offense would be murder if the
23 child is not under six. So lesser offense refers to the fact of
24 the elements that the Jury must find. I don't think there is any
25 basis to object to that language.

1 THE COURT: All right. Here's what I'm going to
2 do then. I'm going to put this on the record, so if you have any
3 further objections to it -- on page 4, the second paragraph,
4 there right above numeral V where it says, "next consider whether
5 the Defendant is guilty of the lesser. . ." then I'm going to add
6 in there, "included offense," which I believe probably better
7 tracks the law. So it's whether or not he's guilty of the
8 lesser-included offense of manslaughter. And then down at this
9 very bottom, the last paragraph, the last sentence regarding you
10 must resolve that doubt in his favor and find him guilty of
11 manslaughter, and I'm going to take out "the lesser offense of
12 manslaughter." So it is stricken from the last paragraph, but
13 the one right before numeral V will be lesser-included offense.

14 MR. SEGALL: Your Honor, our objection -- we think
15 the Court improves the charge by doing so, but our objection is
16 that while Counsel is perfectly correct legally, that is not --
17 that bit of law is still not before this Jury, such that they
18 would understand that this lesser refers to the elements of the
19 offense, rather than refers to the punishment range. And that's
20 why we continue to object, although I believe the Court has
21 improved the charge. Also, we'd note the verdict form, it
22 says --

23 THE COURT: You're right. I'll change that, too.
24 So the verdict form page C and D, will just say, "guilty of the
25 offense." Lesser -- the word lesser will be stricken from the

1 Verdict Forms C and D. I'll make those changes and make sure
2 that you get them. So that request has been granted in part and
3 it's denied in part.

4 And the last is to request an instruction
5 regarding any destruction or mutilation of evidence should be held
6 against the person who has destroyed or mutilated any evidence.

7 MS. SWOPES: There's no instruction required under
8 the law.

9 THE COURT: That instruction will be denied. So
10 the Court will make the changes and give you a copy of those.

11 MS. SWOPES: Thank you.

12 MR. SEGALL: Thank you, ma'am.

13 THE COURT: We're waiting on the Jury.

14 (Recess.)

15 (Jury in, Defendant present, 10:24 a.m.)

16 THE COURT: Good morning, Ladies and Gentlemen.

17 MEMBERS OF JURY: Good morning.

18 THE COURT: I have provided you with a copy of the
19 charge. I'm now going to read it to you. You may take those
20 copies with you in the jury room to assist you in your
21 deliberations. However, it is -- my original charge has my
22 signature on it and it is upon the original charge that you
23 should place your verdict.

24 CHARGE OF THE COURT

25 THE COURT: Ladies and Gentlemen, after the

1 attorneys have prepared their summations, you will go to the jury
2 room. You will then select one of your members as your presiding
3 juror. It shall be your presiding juror's duty to preside over
4 your discussions of and deliberations upon the case, vote with
5 you, and when you have unanimously agreed upon a verdict, to
6 certify your verdict by signing the same as your presiding juror.

7 You will have this charge with you in the jury
8 room and you shall refer to it for guidance during your
9 deliberations. Suitable forms for your verdict are attached
10 hereto. Your verdict must be in writing and signed by your
11 presiding juror. Your sole duty at this time is to determine the
12 guilt or innocence of the Defendant under the indictment in this
13 case and restrict your deliberations solely to the issue of
14 whether the Defendant is guilty or not guilty. Do not let bias,
15 prejudice, or sympathy play any part in your deliberations.

16 After you have arrived at your verdict, you will
17 notify the Bailiff that you have reached your verdict.

18 You are the exclusive judges of the facts proved
19 or the credibility of the witnesses and of the weight to be given
20 to the testimony. But you are bound to receive the law from the
21 Court as it is given to you in this charge, and you are bound to
22 be governed thereby.

23 You shall consider only the evidence and exhibits
24 presented here in the courtroom through the witnesses who have
25 testified. If you want to have the exhibits with you in the jury

1 room for your deliberations, advise the Bailiff. In deliberating
2 on this case, you shall not talk to anyone except the members of
3 the Jury about it until you have been finally discharged from
4 service on this Jury.

5 If you want to communicate with the Court, explain
6 what you want in writing and deliver your message, signed by your
7 presiding juror, to the Bailiff, who will deliver it to the
8 Court. Do not orally explain to the Bailiff what you want.

9 You are instructed that the grand jury indictment
10 is not evidence of guilt. It is a means whereby the Defendant is
11 brought to trial in a felony prosecution. It is not evidence,
12 nor can it be considered by you in passing upon the innocence or
13 guilt of the Defendant.

14 Our law provides that a defendant may testify in
15 his own behalf if he elects to do so. This however, is a
16 privilege accorded a defendant, and in the event he elects not to
17 testify, that fact cannot be taken as a circumstance against him.

18 In this case the Defendant has elected not to
19 testify and you are instructed that you cannot and must not refer
20 or allude to that fact throughout your deliberations, or take it
21 into consideration for any purpose whatsoever as a circumstance
22 against him.

23 All persons are presumed to be innocent, and no
24 person may be convicted of an offense unless each element of the
25 offense is proved beyond a reasonable doubt. The fact that a

1 person has been arrested, confined, or indicted for, or otherwise
2 charged with the offense does not give rise to any inference of
3 guilt at the trial. The law does not require a defendant to
4 prove his innocence or produce any evidence at all. The
5 presumption of innocence alone is sufficient to acquit the
6 Defendant unless the jurors are satisfied beyond a reasonable
7 doubt of the Defendant's guilt after careful and impartial
8 consideration of all the evidence in the case.

9 The prosecution has the burden of proving the
10 Defendant guilty, and it must do so by proving each and every
11 element of the offense charged beyond a reasonable doubt. And if
12 it fails to do so, you must acquit the Defendant. In the event
13 you have a reasonable doubt as to the Defendant's guilt after
14 considering all the evidence before you, and these instructions,
15 you will acquit him and say by your verdict not guilty.

16 When words are used in this charge in a sense that
17 varies from the meaning commonly understood, you are given a
18 proper legal definition which you are bound to accept in place of
19 any other meaning. Bold-face lettering of words or phrases
20 indicates that such words or phrases are defined in this charge,
21 and nothing else.

22 The Defendant, David Rentería, stands charged with
23 capital murder, alleged to have occurred on or about the 18th day
24 of November 2001. To this charge the Defendant has pled not
25 guilty.

1 The Court will now instruct you on the applicable
2 law.

3 Our law provides that a person commits murder if
4 he intentionally or knowingly causes the death of an individual.

5 A person commits the offense of capital murder if
6 he commits murder and the person murders an individual under six
7 years of age.

8 Our law provides that a person commits
9 manslaughter if he recklessly causes the death of an individual.

10 So that you may better understand the nature of
11 the offense, the Court will now define certain terms.

12 A person acts intentionally, or with intent, with
13 respect to a result of his conduct when it is his conscious
14 objective or desire to cause the result.

15 A person acts knowingly, or with knowledge, with
16 respect to a result of his conduct when he is aware that his
17 conduct is reasonably certain to cause the result.

18 A person acts recklessly, or is reckless, with
19 respect to circumstances surrounding his conduct or the result of
20 his conduct when he's aware of but consciously disregards a
21 substantial and unjustifiable risk that the result will occur.
22 The risk must be of such a nature and degree that its disregard
23 constitutes a gross deviation from standard of care that an
24 ordinary person would exercise under all the circumstances as
25 viewed from the Defendant's standpoint.

1 Now, if you find from the evidence beyond a
2 reasonable doubt that on or about the 18th day of November 2001,
3 in El Paso County, Texas, the Defendant, David Rentería, did then
4 and there intentionally or knowingly cause the death of an
5 individual, namely, Alexandra Flores, by choking Alexandra Flores
6 about the neck by unknown means, or, by choking Alexandra Flores
7 about the neck with the Defendant's hand, and the said Alexandra
8 Flores was then and there an individual younger than six years of
9 age, then you will find the Defendant guilty of capital murder as
10 charged in the indictment. Verdict Form A.

11 Unless you so find beyond a reasonable doubt, or
12 if you have a reasonable doubt thereof, you will acquit the
13 Defendant, David Rentería, of capital murder, Verdict Form B, and
14 next consider whether the Defendant is guilty of the
15 lesser-included offense of manslaughter.

16 Now, if you find from the evidence beyond a
17 reasonable doubt that on or about the 18th day of November 2001,
18 in El Paso County, Texas, the Defendant, David Rentería, did then
19 and there recklessly cause the death of an individual, namely,
20 Alexandra Flores, by choking Alexandra Flores about the neck by
21 unknown means, or, by choking Alexandra Flores about the neck
22 with the Defendant's hand, then you'll find the Defendant guilty
23 of manslaughter. Verdict Form C.

24 You are instructed that you may consider all
25 relevant facts and circumstances surrounding the killing, if any,

1 and the previous relationship existing between the accused and
2 the deceased, together with all relevant facts and circumstances
3 going to show the condition of the mind of the accused at the
4 time of the offense, if any.

5 Unless you so find beyond a reasonable doubt, or
6 if you have a reasonable doubt thereof, you will acquit the
7 Defendant, David Rentería, of manslaughter. Verdict Form D.

8 If you believe from the evidence beyond a
9 reasonable doubt that the Defendant is guilty of either capital
10 murder or manslaughter, but you have a reasonable doubt as to
11 which offense he is guilty, then you must resolve that doubt in
12 favor of the Defendant and find him guilty of manslaughter.

13 Verdict Form C.

14 Manner of deliberations:

15 In order to return a verdict, each juror must
16 agree thereto.

17 Jurors have a duty to consult with one another to
18 deliberate with a view of reaching an agreement if it can be done
19 without abrogating individual judgment.

20 Each juror must decide the case for themselves,
21 but only after an impartial consideration of the evidence with
22 their fellow jurors.

23 In the course of deliberations, a juror should not
24 hesitate to reexamine their own views and change their opinion if
25 convinced it is erroneous.

1 No juror should surrender their honest conviction
2 as to the weight or effect of the evidence only because of the
3 opinion of fellow jurors, or for the mere purpose of returning a
4 verdict.

5 The presiding juror, or any other juror who
6 observes a violation of the Court's instructions, shall
7 immediately warn the one who's violating the same and caution the
8 juror not to do so again.

9 In arriving at your verdict, it will not be proper
10 to fix the same by lot, chance or any other method than by full,
11 fair and free exercise of the opinion of the individual jurors
12 under the evidence admitted before you.

13 The last page is your verdict form page.

14 Verdict Form A. We, the Jury, find the Defendant,
15 David Rentería, guilty of the offense of capital murder, as
16 charged in the indictment.

17 Verdict Form B. We, the Jury, find the Defendant,
18 David Rentería, not guilty of capital murder.

19 Verdict Form C. We, the Jury, find the Defendant
20 David Rentería, guilty of the offense of manslaughter.

21 Verdict Form D. We, the Jury, find the Defendant,
22 David Rentería, not guilty of the offense of manslaughter.

23 Mr. Gibson.

24 MR. GIBSON: Thank you, Your Honor. If it please
25 the Court, Counselors.

1 Good morning, Ladies and Gentlemen of the Jury.

2 MEMBERS OF JURY: Good morning.

3 STATE'S ARGUMENT

4 MR. GIBSON: First thing I'd like to talk to you
5 is the charge, which is basically the document you have in front
6 of you. These are the instructions the Court has given you. And
7 at the end you'll be asked to consider the crimes. And there are
8 two crimes in this particular charge that are submitted to you;
9 one is capital murder, intentionally causing the death of a child
10 less than six, and manslaughter, which is recklessly causing the
11 death of the individual.

12 Now, whether something is intentional or reckless,
13 you're bound by the Court's definitions as to those terms. Those
14 are on page 3 and paragraph III. Obviously, something
15 intentional is you intend that result. The death of Alexandra
16 Flores is intended. Something that's reckless is something much
17 less. You read the definitions. It's the facts and
18 circumstances. Somebody knew that that result might happen.

19 I'll submit to you, Ladies and Gentlemen, that the
20 facts as you have in front of you, suggest that there can only be
21 one answer as to whether or not -- not getting to who did this,
22 but whether or not it was intentional or reckless. That evidence
23 comes from the autopsy report and comes from the testimony from
24 Dr. Contín. Dr. Contín testified that in order for someone to be
25 choked to death, manual strangulation, asphyxiation, it requires

1 no less than one to three minutes of constant pressure to the
2 neck. I submit to you, Ladies and Gentlemen, if somebody puts
3 their hand or some other object to a child five years of age for
4 a period of that long, they know what's going to happen, and they
5 intend the death of Alexandra Flores.

6 In addition to that, we know a lot of things about
7 the autopsy. That it was a very violent strangulation. That the
8 bruising and the hemorrhaging of the neck was from the esophagus,
9 all the way from the larynx, all the way down to the spinal
10 column. That this entire area was bruised up. There can be only
11 one answer as to whether or not this act was intentional or
12 reckless, and it was intentional. I can think of no scenario in
13 which someone would place pressure on the child, a five-year-old,
14 for a period of time of no less than one minute without intending
15 to cause the death of that child.

16 Now, yesterday Mr. Segall gave an opening
17 statement. He talked about this case. This really is a
18 circumstantial case. There's no direct evidence involving
19 Mr. Rentería in this crime. You know what, he's right. The
20 direct evidence is someone saying, you know what, I saw David
21 Rentería choke to death Alexandra Flores. We don't have that
22 kind of evidence here. But what we do have here is
23 circumstantial evidence. While I was in law school they kind of
24 gave us a real simple definition. Circumstantial evidence is
25 like this. If you go to sleep at night, it's cold and it's

1 cloudy. You go to bed, it's dry, wake up the next morning, open
2 the blinds, and there's snow as far as you can see. That's
3 circumstantial evidence. You look at the circumstances before,
4 you look at the circumstances after, and you can come to the
5 conclusion, yes, it snowed.

6 Now, direct evidence would be, you wake up in the
7 morning without looking. Someone tells you that it snowed.
8 Without looking or investigating yourself, that's direct
9 evidence. Sometimes circumstantial evidence has the -- can have
10 the advantage that you don't have to rely on what someone is
11 telling you because you look at the evidence and you see if it
12 equates to what people are saying it equates to.

13 And the first piece of circumstantial evidence we
14 have here is the autopsy. Doesn't tell us who killed Alexandra
15 Flores. It tells us she's dead, tells us it was intentional,
16 given the doctor's reports, that she was 47 inches and 56 pounds.
17 Strangulation was violent and that she had orange in her stomach.

18 That day, about 17 miles away from the site at
19 which Alexandra Flores was found, there was other circumstantial
20 evidence that was being investigated and being looked into. That
21 was there at the Wal-Mart. The next circumstantial evidence,
22 State's Exhibit Number 50. It's a log from International
23 American Security. If you look down there at 5:05 p.m. on
24 November 18, 2001, Wal-Mart, Alameda -- it was filled in by
25 Corporal J. D. Trujillo -- found a van, Chevy, Texas, N4FHLN,

1 with its motor running. It's the next piece of circumstantial
2 evidence. Does that tell us that any particular person killed
3 Alexandra Flores? No. But what does it tell us? That there was
4 a van there and it was running.

5 Next piece of circumstantial evidence, State's
6 Exhibit Number 51. The title history for that particular
7 driver's license or that license tag. And there's quite a few.
8 You can tell this particular van has been through many different
9 owners, and the entire registration history is here, but on
10 November 18, 2001, that van was registered to David Rentería.

11 To Lee Trujillo, the next piece of circumstantial
12 evidence we have. She testifies, on November 18, 2001, she's
13 working there at the Wal-Mart. When she's out there at 5:05 she
14 sees an individual and she sees a van and the van is running.
15 She writes down the license plate number and she's waiting there
16 for the individual to return. An individual with a white shirt,
17 dark hair, dark shorts walks up with Wal-Mart bags. They have a
18 conversation. They talk about why the van is running. They have
19 a brief conversation, they go on their way. She sees that
20 individual unlock the van and go into it.

21 She goes over to give someone a boost in front of
22 the east entrance of the Wal-Mart. A few minutes later she has a
23 second encounter with this individual and shakes his hand. He
24 thanks her for not towing the vehicle and says he's going to go
25 back in and do some more shopping. She doesn't say that David

1 Rentería is that person. She doesn't say that David Rentería
2 isn't that person. It's because J.D. Trujillo cannot tell you
3 that that person she remembers was David Rentería or wasn't David
4 Rentería, because that's the state of the evidence and that's
5 what the facts show.

6 But we also have other evidence. The next piece
7 of circumstantial evidence will be from the Defendant himself.
8 Detective Martínez talks to the Defendant on November 20th of
9 2001 and surprisingly enough, he gives -- he talks in this
10 conversation. He gives conversation that just matches the
11 testimony of J.D. Trujillo. Yes, he was shopping November 18th,
12 2001. Yes, he left his van running. Yes, that is his van. Yes,
13 he did have an encounter with a female security guard. Yes, he
14 was carrying bags. Yes, he had a conversation regarding the van
15 running. Yes, there was a second encounter as he was reentering
16 the store for whatever reason. He shook her hand and thanked her
17 for not towing the van and told her he was going to go back in
18 and shop.

19 Does that prove he committed the murder of
20 Alexandra Flores? No. Does it prove that is his van? Yeah,
21 certainly that's some circumstantial evidence showing that.

22 The next piece of evidence I would ask you to look
23 to is State's Exhibit Number 38. This is the Wal-Mart video.
24 And I ask you to look at it carefully and look at it
25 frame-by-frame, if you need to. What does that show us? Well,

1 it shows us the last known images of Alexandra Flores on
2 approximately 5:15 on November 18, 2001, and she's being enticed
3 out. You can look at that evidence. By an individual who's
4 wearing a light ball cap, he's got dark hair, he's got a dark
5 shirt which appears to be on top of a lighter shirt. He has dark
6 shorts. He has white tennis shoes and white socks with a dark
7 stripe on them, whoever this individual is.

8 But we also track this individual in his movements
9 before he lures Alexandra out. We know that at 5:07 p.m. a
10 person, that same person, is seen exiting that Wal-Mart at 5:07
11 p.m. with bags in his hand and he exits out of the east entrance
12 just about the time J.D. Trujillo is over there at the van
13 labeled in State's Exhibit Number 44. We know that at 5:13 p.m.,
14 just about the time J.D. Trujillo is having that second encounter
15 with that individual in front of the east entrance, 5:13 p.m., we
16 see this individual with the light-colored ball cap, the dark
17 shirt with a white shirt underneath it, the dark shorts, the
18 white tennis shoes and white socks with a dark stripe on it, is
19 walking through. At 5:15 we see that man exiting with Alexandra
20 Flores.

21 The next group of circumstantial evidence I ask
22 you to look at is in regards to Sam's store, State's Exhibit
23 Number 92, membership records to a David Rentería, 11/22/61.
24 Does this show us in and of itself? No. But it's evidence this
25 is an individual who does have a Sam's card and that he used that

1 Sam's card on November 18, 2001. At approximately 2:54 p.m. he
2 made a purchase at Sam's on Pellicano. We know that because the
3 next piece of circumstantial evidence is State's Exhibit Number
4 93, which is a Sam's receipt which is a member I.D., David
5 Rentería, his name; Sam's store there on Pellicano; checkout time
6 of 14:54:52, 2:54:52.

7 The next piece of evidence we have is a Sam's
8 video, State's Exhibit Number 95. And this video is taken at the
9 entrance of Sam's approximately one hour earlier that shows David
10 Rentería was using his card, checked out. On that video there's
11 an individual who's been identified as Santiago Rentería. We had
12 Detective Martínez, who was familiar with him, come and testify,
13 you saw, for himself. And next to this individual, Santiago
14 Rentería, was an individual with a white ball cap, with dark
15 hair, with a dark shirt with a light shirt underneath it with
16 dark shorts, with white tennis shoes with white socks and a dark
17 stripe on them.

18 Does that prove that David Rentería killed
19 Alexandra Flores? No, it doesn't. Is it pretty good
20 circumstantial evidence that the person who's in the video at
21 Wal-Mart is David Rentería? Yes, it is.

22 The next set of evidence, swabs taken from the
23 van. This van was seized on December 3, 2001, was searched by El
24 Paso Police Department pursuant to a valid warrant on December 4,
25 2001. And in those swabs there it was determined there were

1 seven stains in that van in the back bench area. And those
2 stains came back to blood, and that blood came back to Alexandra
3 Flores. What else do we know? We know from testimony from
4 Sandra Rubio Flores that prior to December of 2001 they did not
5 know, see, or hear of an individual by the name of David
6 Rentería.

7 The final piece of circumstantial evidence, a palm
8 print card and a piece of plastic, evidence gathered at the scene
9 there behind Dr. Schecter's office on December 3rd, 2001. There
10 was evidence collected there. There was -- and this particular
11 evidence didn't come off a beer bottle down the alley. Didn't
12 come off the floor where people had been walking around. Didn't
13 come off some beer can. It came off the face of Alexandra
14 Flores. And that palm print came back to David Rentería. That's
15 your case, Ladies and Gentlemen.

16 Now, there's always going to be questions
17 circumstantial evidence can't answer, always those whys. Well,
18 you know, we had evidence about contamination logs. Ladies and
19 Gentlemen, there's only one reason that contamination log is being
20 brought up, is because the Defense wants you to believe that the
21 van was contaminated by either Detective Martínez, Pantoja, or
22 both of them. And if you believe they contaminated, you have to
23 believe that it wasn't an accidental contamination. You're going
24 to have to believe that was an intentional contamination, because
25 her blood is found in six different locations.

1 We had discussions about, well, DNA can come from
2 molecular things smaller than the eye, but I know this isn't a
3 lot of evidence. But if you look at these State's exhibits and
4 you can see that, and that's blood. It's not a nanogram, it's
5 not a molecule. Somebody put blood in there. You can tell the
6 blood looks to be put on fresh. If you also believe that the
7 detectives contaminated the scene --

8 MR. SEGALL: Your Honor, we will object to Counsel
9 testifying about the fresh blood, in his opinion.

10 THE COURT: What the Court is going to do is
11 instruct you that what the attorneys say is not evidence. The
12 only evidence that you are to consider is the testimony of
13 witnesses from the witness stand plus the exhibits admitted into
14 evidence.

15 MR. GIBSON: You take a look at that yourself and
16 you determine for yourselves what type of evidence this is.
17 Don't take my word for it. If you believe that the officers
18 contaminated the van, then you also have to believe they can look
19 13 days in the future, because it's not for another 13 days that
20 palm print comes back to David Rentería, when they were in that
21 van November 20th, 2001. The officers testified they never went
22 into the autopsy, never were involved in the crime scene.
23 There's a lot of whys.

24 But if you keep your eye on the ball, what is
25 important lays with these exhibits and the evidence that was

1 presented to you. We don't know why a lot of things, but keep
2 your eye on the ball. Why does somebody lure a child away from
3 the family she loves, strip her naked, put a bag over her head,
4 choke her and set her on fire? No amount of circumstantial
5 evidence is going to answer that question. I ask that you keep
6 your eyes on the ball.

7 In closing, I'd like to recap the evidence of
8 circumstantial evidence that's in front of you. The Defendant's
9 van is at Wal-Mart when Alexandra Flores is abducted. And that
10 fact is uncontroverted. The Defendant's van is running and
11 unoccupied when Alexandra Flores is abducted from the Wal-Mart.
12 That fact is uncontroverted. The Defendant, through his own
13 statements through Detective Martínez, admits to being at the
14 Wal-Mart when Alexandra Flores is abducted. Through the
15 testimony of J.D. Trujillo and through the Defendant's own
16 admissions, his movements in and out of that east entrance match
17 the movements of the individual who is shown in the Wal-Mart
18 video to have abducted Alexandra Flores. That an individual who
19 went shopping with David Rentería's Sam's card with David
20 Rentería's father dressed exactly like the man who abducted
21 Alexandra Flores is seen at the Sam's two hours before.

22 THE COURT: Mr. Gibson, 15 minutes.

23 MR. GIBSON: Thank you, Your Honor.

24 MR. SEGALL: Your Honor, we will object to
25 stacking inferences upon inferences.

1 THE COURT: Objection is overruled.

2 MR. SEGALL: Thank you.

3 MR. GIBSON: That blood belonging to Alexandra
4 Flores, which has no good reason for being in the van of David
5 Rentería, is found in the van of David Rentería. And a palm
6 print on a plastic bag which has no body, no business being fused
7 to the dead, lifeless body of Alexandra Flores, is found fused to
8 the face of Alexandra Flores.

9 And Ladies and Gentlemen, that is the state of the
10 case against David Rentería. I ask that you do justice by your
11 verdict, whatever that verdict is.

12 THE COURT: Mr. Riley or Mr. Segall, who's going
13 first?

14 MR. RILEY: Thank you. May I have just a moment,
15 Your Honor?

16 THE COURT: Yes, you may.

17 MR. RILEY: Thank you. May it please the Court.

18 THE COURT: Yes, you may.

19 MR. RILEY: Counsel, Co-counsel. Ladies and
20 Gentlemen of the Jury, good morning.

21 MEMBERS OF JURY: Good morning.

22 **DEFENSE'S ARGUMENT**

23 MR. RILEY: The stuff I moved will still be
24 available to you. I just wanted to be able to address you about
25 my issues. I'm not going to be talking to you for very long. Of

1 course, as you know, when attorneys say that, from sitting back
2 in that jury room all this week and last week, you know that
3 that's not necessarily true. But I just want to talk to you
4 about a couple of things.

5 Essentially, I want to talk to you to refresh your
6 memory with regard to voir dire. Typically, I would not do this
7 in closing argument, but because each of you had a completely
8 different voir dire, each of you had an individual voir dire and
9 because none of us can remember exactly what we said to each and
10 every one of you because we interviewed something over a hundred
11 people, I want to refresh your memories in that regard, then I'll
12 speak briefly of the charge.

13 Now, the first thing that I want to talk about is
14 what's called the burden of proof. I'm fairly certain that I
15 talked, or we talked, with most of you about this. And as you'll
16 recall, the burden of proof is on the State. And it's not partly
17 on the State, it's not kind of on the State, it's not a little
18 bit on the State. It is all and always one hundred percent on
19 the State. And you promised us at that time during your
20 individual voir dires that you would hold the State to that
21 burden.

22 Now, they might say to you -- and I can't possibly
23 tell you what the State will be arguing during their argument --
24 but they might say something to you like, well, the Defense
25 should have brought you this or that or the other. And I would

1 suggest to that you that is burden shifting, because they are the
2 ones that need to answer the questions. We did more than we
3 actually had to, as you'll recall. We don't have to put on any
4 case, but we did put on a case. In fact, we used police
5 witnesses, FBI witnesses, to put on our case.

6 Now, the next thing I want to talk to you about is
7 the standard of proof. As you recall, the standard of proof in a
8 criminal case in Texas is beyond a reasonable doubt. And I don't
9 know who we talked to about what, but we had a chart with
10 increasing burdens. The lowest would be reasonably articulable
11 suspicion. That's the suspicion by which a police officer might
12 stop somebody and be able to say, hey, what are you doing here.

13 The next one would be probable cause. Probable
14 cause would be the proof necessary to obtain a search warrant or
15 to get an indictment presented from a grand jury. That's the
16 standard of proof. It's higher, but it's not the highest.

17 And the next is what's called the preponderance of
18 the evidence, or what they taught me in law school is more likely
19 than not. And that's just more than 50 percent. Whoever has
20 more than 50 percent, that side wins. So already on our chart
21 we're at 50 percent, okay.

22 The next highest is what's called clear and
23 convincing. As you'll recall, some of you will recall, clear and
24 convincing is higher than a preponderance, and clear and
25 convincing is the standard which is used in a child custody

1 dispute, okay. It's higher because we're dealing with something
2 more important than mere money. We're dealing with a child,
3 okay.

4 And finally, the highest standard known to our law
5 is beyond a reasonable doubt. It's even higher than the standard
6 used for determining the custody of a child. Why? Because we're
7 talking about the life and liberty of a human being. So that is
8 the highest level and that's the standard that they have to prove
9 their case to you by.

10 What is it that they have to prove? They have to
11 prove the elements. The elements are stated in the charge that
12 the Court has given you. One way to think of the elements is a
13 recipe for a cake. If you have a recipe and you want to make a
14 cake, you need eggs and water, milk, flour, so forth, sugar. And
15 you're going to make a cake, but you determine that you're going
16 to leave some of the ingredients out. You're going to leave the
17 baking soda and the sugar, and you're going to mix the rest of
18 the stuff together, and you're going to pop it in the oven.
19 You're going to bake something, but whatever comes out of there
20 won't be a cake because you didn't have all of the ingredients.
21 Well, elements are just like ingredients. If they don't have all
22 of the elements of their case, then they can't make a cake, all
23 right? That's the way it is.

24 And finally, the last thing I want to touch on is
25 the Fifth Amendment privilege of a person accused of an offense.

1 This is a right which the founding fathers placed in the
2 Constitution of the United States because they did not want the
3 authorities to drag somebody off to some dark room and have a
4 little discussion with them for a while with whips and chains and
5 so forth, and then bring them back and have that person then
6 enter their plea before the Court. So everybody has the right to
7 remain silent.

8 Now, there is one last thing I want to talk about
9 in this regard. I like Mr. Gibson very much, but I need to take
10 exception with what he said about his snow example. He
11 indicated, from my understanding, and perhaps I misunderstood
12 him, was that if you go to sleep at night and you wake up in the
13 morning and the ground is covered with snow and you see it, he
14 suggested that that is circumstantial evidence. But I believe
15 that that is direct evidence. You open the blinds or the
16 curtains and you see the snow, you see it with your own eyes,
17 that is direct evidence. Circumstantial evidence, however, would
18 be you draw the blinds, you see the snow and across the street on
19 your neighbor's sidewalk you see footprints. That is
20 circumstantial evidence that somebody walked on the sidewalk
21 across the street, okay. That's the difference. And the only
22 reason I bring it up is because this case does involve
23 circumstantial evidence.

24 Now, the charge of the Court is the Court giving
25 you the law as it applies to this case. You, you all, the Jury,

1 are the people who determine the facts, any facts that are
2 presented, these pieces of evidence, the testimony that you
3 heard, the video, all of that. You were the ones that determined
4 how to piece those pieces of evidence together to determine the
5 facts as you see fit, and then to apply them to the law as the
6 Judge has given you, okay. But you were the ones who determined
7 what the facts are. And nobody out here, not the Judge, not the
8 State, not me, none of us, can tell you what the facts are. That
9 is solely up to you, all right?

10 Now, in this part of the trial, you may not let
11 bias or prejudice influence you with regard to your vote or your
12 thinking. And what does that mean? It means that -- this is bad
13 from my perspective -- that you can't, for example, let sympathy
14 influence your vote with regard to David. However, conversely,
15 you can't let sympathy influence your vote with respect to the
16 facts in this phase of the trial with respect to what happened to
17 Alexandra, okay. This is not where this comes in at all in any
18 way, shape, or form. You are simply to consider the facts and
19 apply those facts to the law.

20 Now, the Judge has defined for you on page 3
21 different mental states, culpable mental states, okay. She's
22 defined for you intentionally, knowingly, and reckless, or
23 recklessly. And clearly, they're defined right here, but I've
24 got some examples to explain what they -- how you might think
25 about them in determining how you should think about them.

1 An example of intentionally would be I'm in my
2 office and I push a heavy box out my window. And I do that
3 knowing that there's somebody down there below my window standing
4 and I want to hit that person. That's intentional, okay.

5 Now, the next one is knowing, or knowingly. In
6 that kind of culpable mental state, I push the box out the window
7 and I know that there's somebody down there, but I don't
8 necessarily care that I hit them. And that's taking a really
9 great risk, okay. So that's knowing or knowingly. Because,
10 obviously, if it hits the person, it's going to damage them,
11 okay.

12 Now, in reckless -- reckless, it's like I'm
13 cleaning my office and I push the box out the window and I don't
14 know whether there's anybody out there, but neither do I care,
15 okay. I don't know and I don't care. And in the terminology it
16 says, and this action is a gross deviation from the standard of
17 care which an ordinary person would exercise under similar
18 circumstances.

19 Well, probably, certainly none of us would push a
20 heavy box out a window without looking and checking and yelling
21 "fore" or something like that, so that's what it's like. So if
22 that helps you to understand the definitions, I'm glad.

23 On page 4 the Judge has applied the law to the
24 facts as they might apply for manslaughter. And in that case it
25 uses recklessly. So think about the definition. And I think

1 that you'll see that after Mr. Segall is finished discussing the
2 case with you, that it is a clear case of manslaughter here.

3 Finally, on the last paragraph there on page 4,
4 you'll see that if you have a difficult time determining whether
5 it's capital murder or manslaughter, something else or nothing
6 else, then you must resolve the issue in favor of David and you
7 must find him not guilty, okay. That's the way the law is.
8 Again, you all decide the facts. But the Judge gives you the
9 law. And you must follow the law as it's given to you by the
10 Judge.

11 The last thing I think I want to talk to you
12 about -- Mr. Segall will get mad at me if I take very long -- is
13 that on page 5 you'll see under "e" it says, "no juror should
14 surrender their honest conviction." I believe that we talked to
15 some, if not all of you, about that during voir dire. If you
16 really believe a particular point or issue, you have a duty to
17 discuss that with other people. But you also have the right, as
18 well as the duty, to hold on to that conviction. And I'm fairly
19 certain we discussed with a number of you that you, as a juror,
20 should not browbeat that person who has that conviction. I know
21 that we discussed that with you.

22 I believe that after a fair view of the evidence
23 that you will see that Mr. Rentería is not guilty of the offense
24 with which he is charged, that the State has clearly failed to
25 prove each and every element of the offense beyond a reasonable

1 doubt, which is their burden.

2 And with that I thank you very much. And I will
3 pass you off to Mr. Segall.

4 MR. SEGALL: May it please the Court.

5 THE COURT: Yes.

6 MR. SEGALL: My colleagues.

7 Good morning.

8 MEMBERS OF JURY: Good morning.

9 DEFENSE'S CLOSING ARGUMENT

10 MR. SEGALL: That was a little bit better than you
11 gave Mr. Riley.

12 The first thing you did when we went over to
13 Liberty Hall was you took an oath. And the oath was to give true
14 answers to the questions to be propounded to you. And then when
15 we started the evidence here, each witness was asked to swear to
16 tell the truth, the whole truth, and nothing but the truth. For
17 that is the foundation upon which you must look at this evidence
18 to try to make a determination, to try to find things. If you're
19 not getting truth from the witnesses, your verdict will not be
20 true. Because like one witness said, garbage in, garbage out.
21 If it's not truth coming from the witness stand, you can't find
22 the truth. It's the basis. It's the bedrock. If we don't have
23 it, if we don't have candor and honesty coming to you, then I
24 submit to you, you cannot do what the law wants you to do.

25 What we had in this case -- it's a terrible case.

1 The other side has not put up the pictures. You've seen them
2 briefly. I'm sure you'll see them again. There's no question
3 this is a bad, bad case. And that's why the police officers got
4 up here and lied to you. They don't want the person whom they
5 think is guilty to get off in any way. And that's why they
6 destroyed their notes, that's why they changed their testimony.
7 That's because they looked at this case on the 19th, they decided
8 that this was a one-person case, that the person responsible is
9 the person in the video, that the person who left the print was
10 guilty, guilty of not only wanting -- guilty of wanting the
11 victim dead, not of wanting to stop her from crying.

12 You know, a house gets burglarized, police go in,
13 find a palm print on a surface, find the person who put the palm
14 print there, and there's absolutely no explanation of how that
15 print can get there other than with a burglar. That's a very
16 good circumstantial evidence case. That's open and shut. And
17 you know, that's what they thought they had here. That's what
18 they claim they have here, is an open-and-shut circumstantial
19 evidence case, because as Mr. Gibson said, the print was found
20 on her face. Isn't that what he just told you? That's what I
21 heard. He said the print was found on her face. I submit to
22 you that if the print were found on her face, that that ought
23 to be a guilty plea. But we all know that's an exaggeration.
24 we all know the print was found on a plastic bag, not on her
25 face.

1 Is there a difference between on her face and on
2 the plastic bag? And the answer is there most certainly is.
3 There is a world of difference. It's kind of like that burglary.
4 If we find somebody's palm print outside the burglarized house
5 and not in the house, does that prove to us beyond a reasonable
6 doubt that the person who left the print outside the house was
7 the burglar? No, it does not. But the police, the police
8 decided that this was one person involved, that the person left
9 their print on the plastic bag was the guilty person, and it
10 would be the same person as seen in the video. And they decided
11 this before they got any evidence, before they did any
12 investigating. And anything that didn't match that conclusion
13 was ignored, was set aside.

14 And you know, as a lawyer, the saddest part about
15 this case is the destruction of our system. We had three
16 detectives get up there and tell you at least one or more lies.
17 Not maybe. We had Detective Martínez, who told you that -- he
18 swore in court that J.D.'s description of the clothing matched
19 what he saw in the videotape. He swore to it. And why did he do
20 that? Because it helps their case immensely. And is it true?
21 No, it is not true. And did he know it was not true? Well, he
22 finally said nope, finally was forced to admit to it. But he had
23 sworn in court. Got up there on that witness stand, raised his
24 hand, told something that wasn't true.

25 How about Detective Ruiz, the case agent? Well,

1 never saw the FBI. The FBI remembers him. He told you that the
2 contamination log was everybody in the green zone, except the
3 media, which was in the green zone, wasn't listed. Then he told
4 you that the log only records the red zone. Under the law when
5 you change your testimony from one side to the other and they're
6 inconsistent, this is called lying. It's called perjury. This
7 is inconsistent statements. Was it that form, the green zone?
8 Or was it the red zone? Well, then he says he is the first
9 detective on the scene. He's assigned the scene. Remember that?
10 Very clear. But the paperwork says he got there after Detective
11 Baca. And he told you that this paperwork was wrong, that this
12 paperwork was a lie, until the State read it to him and then he
13 said, no, it's right. It's true. We're going to try to kill
14 this man based on lies. Based on lies.

15 Then we have Detective Pantoja who testified
16 clearly and unequivocally that the Defendant did not talk to the
17 FBI. Then he said, well, I don't remember. But the FBI was in
18 my office talking to him, talking to me, I don't remember. So
19 when I said he wasn't there, that was a lie. Because I really
20 just don't remember. But I remember everything.

21 Then he got in the van and searched it. He told
22 the Judge, he swore to the Judge that the answer to the question
23 was "yes." "Did you get in the van?" He said, "yes." And then
24 gets up here when he discovers that that's a bad answer, he says,
25 "No, I stood outside and just looked in the back."

1 Then they admitted to you that they lied on the
2 search warrant application. Here's the start of a police state.
3 Because what we have is our law says that you must accurately
4 tell the Judge why it is that you want to search for something,
5 why you think that something is there. And what they said was,
6 we searched the place, we didn't see anything, we then tell the
7 Judge all the good reasons to search the thing and we don't tell
8 him that we've already looked and the stuff wasn't there. When I
9 asked him, well, how do you justify that, he says, anything could
10 appear there for any reason at any time.

11 Well, Ladies and Gentlemen, if you permit that,
12 you have just surrendered to a police state because that's what a
13 police state is, is the police think that for no reason
14 whatsoever, if they're out there to protect us from the
15 criminals, they ought to be permitted to search whatever they
16 want whenever they want, however they want, because if you're not
17 guilty, you won't mind. Right? I mean, that's the basis of a
18 police state, is the police state is not there because the police
19 are evil, they're not there because the people doing it think
20 they're doing it to oppress, they think they're doing it because
21 it's the right thing to do. That's the bottom line on a police
22 state.

23 That's what we had in this case, is they went to
24 the judge and lied to the judge. They didn't have to lie to the
25 judge. They could have told him, we've looked in there. There

1 was no clothes, there was no blood, but now we want to go back
2 there and check again. But they didn't. They chose the easy
3 way, the slight exaggeration.

4 You know, they said he freely and voluntarily
5 consented to giving his palm print. Here's a stack of palm
6 prints that were collected in this case by other persons. Guess
7 what's attached to them? Guess what's attached to them? Piece
8 of paper signed, says, "I freely and voluntarily consent."
9 'Tain't there. 'Tain't there.

10 Then we get to the problem of the destroyed
11 evidence. Why do they destroy the handwritten notes? They
12 destroy the handwritten notes so I cannot catch them in lies.
13 That's why they destroy the handwritten notes. Now, they said,
14 well, other people have difficulty reading them. I don't doubt
15 that. They say that the D.A.'s office wants it in typed up. I
16 don't doubt that a bit. I'm sure they do. Does that excuse them
17 for destroying the evidence? And the answer is no. They said,
18 it's not evidence. Of course it's evidence. That's why the FBI
19 keeps it. It's evidence. It will find errors, mistakes, and if
20 you're being honest -- remember that first officer, Officer
21 Lloyd? He got up there and he said that the Defendant came down
22 and he was in the company of a detective and I said, are you sure
23 that it's the detective who you mentioned? And he said, nope,
24 I'm not sure.

25 Does that hurt him? Does that somehow prove that

1 they're anything other than a human being? Absolutely not. Does
2 it destroy their case? Absolutely not. In any way, shape, or
3 manner, honesty, fairness, candor does not destroy good cases.
4 Honest, correct cases can withstand cross-examination. You can
5 wave the original notes around. The FBI wins their cases across
6 the street all the time without destroying their notes.

7 They destroyed their notes so I wouldn't be able
8 to cross-examine them so they can lie with impunity. They
9 destroyed the contamination sheet. There's no question in our
10 mind they destroyed it. I made a big deal about it on Thursday.
11 I expected when I walked in here Friday morning that it would be
12 in their hot little hand. We gotcha. You wanted to see it.
13 There it is. Huh-uh. It's been destroyed. Why has it been
14 destroyed? Why? Because they're afraid it will destroy their
15 case.

16 What else is missing? Well, there's the outside
17 videotape. You'll remember the FBI said they were given a tape
18 and that at 5:17 the child is getting into a dark minivan.
19 Defense didn't make this up. This is not something within our
20 possession. This is what? Back in November they have this piece
21 of tape and now suddenly when the van turns out not to be a
22 minivan, dark color, red, suddenly that evidence is gone. The
23 young man says we can't see anything in that videotape, it's
24 nothing, it's garbage, I can't see anything. At 5:17 the child
25 is seen getting into a dark-colored minivan. Please enhance.

1 Where is it? It is not the Defense's job to find evidence and
2 bring it for you that is in the possession of the State. That
3 can't be done. That's their job. Present their evidence.
4 David's van is not a minivan. Gets arrested and the evidence
5 gone. He's trying to shift the burden to say otherwise.

6 Now, let's look at some problems in their case
7 because their case has problems.

8 The security guard. Anybody here think she was
9 dishonest, she was lying, she was trying to make things up?
10 She's trying to help David? Very funny. Okay. She doesn't say
11 it's him. Let's say it's not him because she is an honest
12 person. Didn't say a thing. Doesn't say it now. Even though
13 they took a single photograph of him and say, is this the guy,
14 and she said, I can't tell. But she does say that he had six
15 Wal-Mart bags and a white shirt, no hat. And so I guess what the
16 State is going to maintain is that the Defendant wanders through
17 the Wal-Mart with this dark-colored shirt on over a light-colored
18 T-shirt, that he exits the store and in between the store and the
19 van, for some reason takes off the green shirt and the baseball
20 cap and hides them, figuring he's going to talk to a security
21 guard when he gets out.

22 Gets out there, talks to a security guard, comes
23 back over to the store, and you'll remember he comes from down
24 here at the gas station, back here to the store, because this is
25 right where she's fixing the person's jumper cable. Shakes her

1 hand. You know, he's going to rob a bank, shakes the hand of a
2 security guard to make sure they identify him, and goes inside.
3 And between here and here he puts his shirt back on. Somehow
4 that circumstance doesn't help. Well, I guess she's just wrong.
5 Okay. She doesn't know what she's talking about.

6 We can just dismiss anything that doesn't fit in
7 this case, just like all those tips. This person doesn't look
8 like so-and-so. Their fingerprint didn't match. They got to go
9 home free, even if they murdered this child.

10 Okay, what else do we have wrong? The minivan.
11 She's seen getting into a minivan at 5:17. Boy, that doesn't fit
12 the State's case. The van, David's van, was searched by two very
13 experienced officers November 20th. What were they looking for?
14 They were looking for two things. They were looking for her
15 clothing and they were looking for blood. Bloodstains. Two days
16 after the crime. They get in there, one of them at least. At
17 the very least, one of them gets in there and searches for
18 bloodstains. That's what he's looking for. And does he find
19 them? No, doesn't find them.

20 We're not talking about somebody who's -- you
21 know, doesn't care and is lackadaisical. I didn't get that
22 impression. In fact, I get the opposite impression. That if
23 there was anything in that van, anything, that van would have
24 been towed that night right there, right then. But nope.
25 Nothing found. Now, they find, you know -- you look at those

1 pictures with blood on her arms and legs and you're left with
2 this very strange, strange thing; that remember, there's
3 supposedly some DNA found, bloodstains found on the top of the
4 rear seat where like if somebody put their hand there. So the
5 person whose bloody hand is there doesn't put any blood on the
6 steering wheel. Remember, it's covered with one of those little
7 plastic things with little holes that would clearly hold blood.
8 But there's no blood there. There's no blood on the shifter.
9 There's no blood on the pedal. No blood in any of those places.

10 Now, the blood on the shoe. This one was
11 fascinating. This one educated me for he had a pair of white
12 tennis shoes the police seized. And one of them was perfectly
13 clean and the other one had a weak response on -- for blood. But
14 no DNA. But no DNA. What does this tell us? What did we learn?
15 Learned something very strange that didn't even occur to me.
16 Blood is not DNA. DNA and blood are not always together.

17 MR. ESPARZA: Your Honor, I'm going to object. I
18 think that is outside the record and that's not the evidence in
19 this case.

20 THE COURT: The Jury will remember the evidence
21 from the witnesses.

22 MR. SEGALL: You'll remember what she said was
23 that there had to be enough DNA present; that there could be
24 blood without DNA. The amount of DNA necessary was two nanograms
25 or one nanogram. What in the world is a nanogram? A nanogram is

1 a billionth, a billionth of a gram. I can't conceive of how
2 small this is. This is inconceivably tiny, just amazingly tiny.
3 There was none in this state on this shoe.

4 Two days after the fight and struggle that left
5 her knuckles -- the Defendant was inspected and no injuries
6 found. His hands looked at. Nothing found. And none of the
7 decedent's hair was found. You'll remember the stipulation,
8 because the one officer was willing to say, oh, yeah, there was
9 hair found. There was hair found. That must have been hers.
10 Remember that? He said it was tested positive. But point of
11 fact, there is no lab report from the Federal Bureau of
12 Investigation indicating that the hair similar to Alexandra
13 Flores was located in the Defendant's van. Hair was found, not
14 hers. Some other evidence that we'll just ignore. Tire prints
15 don't match. We'll just ignore it. Footprint doesn't match.
16 Just ignore it.

17 Fingerprints both at the scene and in the van
18 don't match anybody. We don't care. This is a one-person crime.
19 This is the person in the videotape. We don't need to explain
20 anything else. DNA was found on the decedent. Not David's. Who
21 cares? Not important. DNA was found on the decedent. No one
22 says it's David's, no one cares. Okay.

23 Gas can comes and goes. Well, I don't have any
24 doubt in my mind gas cans come and go. That's normal. That's
25 expected. But does this gas can that they have in evidence here

1 have anything to do with this crime? The answer is there's no
2 evidence that it does. It's just a gas can found in an old
3 vehicle. What a surprise.

4 Then we have the rest of the case, the basis of
5 this case, which is just a puzzlement. If David grabbed the
6 decedent for sex for which, by the way, there was absolutely no
7 evidence -- he gently fingered her and then brutally strangled
8 her to death, doesn't make any sense -- if he did so and killed
9 her for that purpose, we know to the east of that store within
10 two miles it was vacant. There was privacy to do your dirty
11 work. But that's not where the child was found. Why go the
12 wrong way? Miles and miles to a place surrounded by apartments,
13 surrounded by hotels with people. That's what this crime is all
14 about. Doesn't make sense.

15 Now, let me suggest to you that that bag was
16 touched by David, was used by the killer. That the DNA was
17 contamination. Those officers were at that scene. Those
18 officers walked around that body. They were listed. They're
19 listed as having done so, even in the edited contamination sheet
20 because it doesn't make a bit of sense to make a list of people
21 who walk down the street who don't go anywhere near the red zone.
22 It don't make a bit of sense. Why in the world do that?
23 Incompetence.

24 So what we're going to say is, well, our police
25 department is incompetent, and therefore he's guilty? No. No.

1 This is the biggest case they've had. They made sure it was done
2 correctly. And they kept a correct log of who all was at that
3 red zone. They walked around that van and they spread DNA.
4 Micrograms are enormous compared to what we're talking about.
5 Nanograms, just nanograms. No evidence that this was not
6 contamination. Did their expert say this is not contamination?
7 No, she didn't. She said garbage in, garbage out. Their
8 evidence custodian said -- what happens if two of your officers
9 walk around the scene and walk around the van? He said, well,
10 it's all garbage. It's ruined. All right.

11 The only eyewitness to describe the driver of the
12 van comes up with a different description than in the video.
13 She's trained to be honest. I thought she was caring. You're
14 going to be asked to ignore her. You're going to be asked to do
15 something which, it don't work, it don't help, so it must be
16 wrong.

17 Ladies and Gentlemen, they destroyed the evidence
18 that can help us prove David's innocent. Hold it against them.
19 Don't let them put police on the witness stand who lie. I know
20 we don't want our police to lie. We know we want them to be
21 honest. We want them to solve crimes. We want them to do what's
22 necessary to protect us. That's what their job is, but this is
23 the point where we say, huh-uh. Be a man. When you're wrong,
24 say you're wrong. You misinterpret a question, that's fine.
25 We're all human. I've done it. Be a man. Because what you're

1 trying to do is to have him die in prison. I'm trying to have
2 you put your name on a piece of paper so that that man dies and
3 you're going to make me do it on lies, on exaggerations.

4 How dare they? How dare they? We don't know what
5 happened. I can't prove it to you. Bad defense work. Good
6 defense lawyer gets up on a circumstantial evidence case and
7 tells you what happened, fits all the pieces together. See, the
8 Defendant didn't do it. I can't do it. Can't do it because I've
9 been given lies. I've been given exaggerations.

10 Now you're going to hear Mr. Esparza, who is
11 excellent. One of the things he's going to do, I suspect, one of
12 the things I object to, is he's going to say, well, the person in
13 the Sam's club is the same person in the Wal-Mart, which is David
14 Rentería, because someone used David Rentería's card to buy \$80
15 worth of groceries some hour or so before and he stood near David
16 Rentería's father.

17 You see how this is a chain of inferences? This
18 goes from one inference to another inference. We infer that the
19 person standing near whom the police officer swears is
20 Mr. Santiago Rentería, is somehow related to him. It's an
21 inference. We infer that that's the person who used the Sam's
22 Club card. When we looked through the exhibit, we saw
23 Mr. Santiago Rentería does not have a Sam's Club card. So we
24 know that when he walked in that door and when that card got
25 used, that clerk didn't check. And indeed, they said that they

1 don't, really. They'd like to. But they really don't. It's not
2 a positive identification. It's not a police officer checking
3 you against your driver's license. After all, they're in the
4 business to sell you merchandise, right. Take the cash.

5 Then they want to infer from that that that's the
6 same person in the other film. Then they want to infer from that
7 that that person is the person who lured the child out. You see
8 the length of inferences? And they're all inferences and they
9 don't have any separate bases. They're piled one on another, a
10 series of guesses. And as they move away from reality, from a
11 basis, from evidence, they become less and less reality and more
12 and more do they become good guess, could be, good probable
13 cause. And then we're going to do a circular. We are going to
14 do a circular and the circular is, okay, we have found a palm
15 print, and that palm print then supports all our inferences. And
16 that DNA supports all our inferences, when in point of fact, they
17 do not, because the palm print proves he touched the plastic bag.
18 That's all it proves, not that he intended this child die.

19 The DNA, the DNA doesn't prove it. Well, no, if
20 the officer entered the van, saw the bloodstains, said, you know,
21 there's fresh blood here, maybe we should have this tested today,
22 that sounds pretty good to me. Didn't happen. Blood wasn't
23 there. And what do we know about blood and DNA? And the hair?
24 It's just not all there. So that's why I'm left with a can't
25 tell you what happened. Because job wasn't done right. People

1 were accused of being involved in this crime who were released.
2 Their stories not even taken, their palm print didn't match,
3 adios.

4 Ladies and Gentlemen, when I look at a
5 circumstantial evidence case -- I would think that when you look
6 at a circumstantial evidence case -- that you would say to prove
7 it beyond a reasonable doubt, there must not be circumstances
8 which contradict the conclusion. I have tried to point out to
9 you a number of evidence, not speculation, not hope, but evidence
10 that weighs against it, that does not add. I'm sure after you've
11 had an impartial and full look at all of the evidence, that you
12 will understand David didn't do this. Thank you.

13 THE COURT: Mr. Esparza.

14 MR. ESPARZA: Your Honor, can we approach?

15 (At the bench, on the record.)

16 MR. ESPARZA: Do you want to let them just stretch
17 a little while I collect my evidence? It's going to take me a
18 bit to put it in order.

19 THE COURT: While you're up here, do you want to
20 release the two alternates? It's going to be right at lunchtime.
21 Do you have an objection to me allowing them not to go into the
22 jury room, but to go to the cafeteria with the Jury downstairs
23 with the Bailiffs to have lunch, and then when they come back the
24 Bailiff will make sure they don't go in. They won't have any
25 type of deliberation.

1 MR. SEGALL: They will not discuss the case prior
2 to -- after lunch?

3 THE COURT: Right. I'll have Louie make sure to
4 be in the jury room with them at all times while they collect
5 their stuff so there's no discussion of the case.

6 MR. SEGALL: Your Honor, we would have no
7 objection to that.

8 We further would like the record to reflect that
9 we understand that some of the jurors separated from the other
10 ones for the purposes of the De La Hoya fight, and we have no
11 objection to that and we had none before it happened.

12 THE COURT: Thank you.

13 MR. ESPARZA: You want them to stretch?

14 (Open court, Jury hearing.)

15 THE COURT: He's going to gather up some of the
16 exhibits, and so if you want to stand up and take a little
17 stretch break, I'm going to.

18 The Jury has indicated they need a real break for
19 just a few minutes. Leave the charges here on your chair. Do
20 not discuss the case, please.

21 (Recess.)

22 (After recess, Defendant and Jury present.)

23 THE COURT: You may proceed.

24 MR. ESPARZA: May it please the Court.

25 THE COURT: Yes.

STATE'S CLOSING ARGUMENT

MR. ESPARZA: Counsel for Defense, Ms. Swopes, Mr. Gibson, Ladies and Gentlemen of the Jury.

It's my final opportunity to speak to you to tell you what I believe, based on the evidence, what the evidence showed. So I'm going to spend a little time talking about this case. And when I get done, I'm going to ask you to find the Defendant guilty of capital murder beyond a reasonable doubt. No question. There's no doubts. You already know that's the right answer and you probably think I ought not talk.

But my client, the State of Texas, says we want to make sure that you understand the evidence. And I know you've been here five days and I know it's been more than that and it's been long and hard. But now is not the time to rest because there is lots to do still. As a matter of fact, I get to rest because you go to work. And when you go to work, I want to make sure you have the tools you need to make the right decision.

Now, somewhere on that charge you're going to find something about reckless, and the lesser of manslaughter. You're going to see that in the charge. You will never need to get there. There is no lesser here. This is an intentional and knowing killing, period. It's clear. There's nothing here.

This little part about maybe stopping her from crying, did you hear that? I mean, get real. That didn't happen. Dr. Contín said if you had to rate the strangulation

1 from one to four, it's a four.

2 I'm going to talk to you a little bit about
3 circumstantial evidence. I'm going to talk a little bit about
4 direct evidence. And you know, if you're just real, real quiet,
5 just real quiet, all of this speaks to you. You may not hear it
6 right, right now. But when you get back to look at it, it will
7 talk to you. Is circumstantial evidence better than direct
8 evidence? I'll argue that it is.

9 On direct evidence, you have someone testifying
10 that something happened. And you know what the attack is on
11 direct evidence? That they couldn't see, that they were biased,
12 that they're wrong. They needed eyeglasses. There's something
13 wrong with direct evidence.

14 But you know what circumstantial evidence and
15 physical evidence says? It doesn't lie. It certainly can be
16 misinterpreted. But it never, never lies. And that's what makes
17 this case. But you know, to put all these pieces together, to
18 make it all fit -- because what circumstantial evidence does is
19 you put the circumstances together, just like Mr. Gibson did. He
20 piled it one after another. And in circumstantial evidence
21 cases, sometimes there's a little gap, sometimes there's a big
22 gap. Sometimes in circumstantial evidence cases you can't make a
23 decision. But not this case. But in this case it's a little bit
24 different. Because in this case I have the glue that holds my
25 circumstances together. So I want to spend just a little time

1 talking to you about the glue that holds this together. And that
2 is the Defendant.

3 Let's take a look at the killer. For the last
4 hour I didn't hear anything about the killer. So let's take just
5 a little bit -- take a little time and talk about the killer.
6 And this is what I know about the Defendant. One, he committed a
7 violent, vicious, horrendous act. He strangled that little girl
8 to death. It took from a minute to three minutes to kill that
9 little girl. And we went from there, to this. This is his
10 handiwork. You will see these in the jury room. And I'm sorry,
11 but I do not apologize. This is vicious. This was beautiful.
12 He touched her and we ended up with this. This is beautiful;
13 this is his handiwork.

14 And you know, let's talk a little bit about our
15 killer. Let's talk a little bit about him. Just think about how
16 smart he is. Think about how he left the body. He took the
17 clothing away. Why would he take the clothing away? Because
18 he's trying to destroy evidence. He doesn't want to leave
19 anything behind. So he takes her clothing. Why does he set her
20 on fire? To destroy evidence. To destroy evidence. That's the
21 whole purpose. He's cold, he's methodical, and it's planned.

22 Why leave your van running? Because he's cold,
23 and he's methodical, and knows exactly what he's going to do.
24 There was no need to return to the store. He'd already done his
25 shopping. He'd already taken care of his business. But he left

1 that van running. And there's some talk here about maybe there's
2 some other person involved. Well, we heard about the troubles
3 with the van. And don't you know if you've got a partner, you
4 just have him drive the van up, open that sliding door, shove the
5 girl in there, and you're gone.

6 There's no one else here. You know why there's no
7 one else here? Because our killer is smart. Because he's
8 thought about it. And he has to have complete control over the
9 evidence. Complete control, because that's the only way he's not
10 going to get caught. Because he thought he was going to get
11 away. But he's not going to get away because you're not going to
12 let him get away with it. He thought he was.

13 That's why on the 20th of November, when they came
14 to talk to him, he's a pretty cool customer, isn't he? He knows
15 exactly what he's doing. Because he doesn't know we have the
16 print. Nobody knew. He didn't know we had made a match. He
17 didn't know we were going to make that match about a week later,
18 and neither did those officers.

19 So when they went to talk to him, all they were
20 doing was well, guess what. We got a plate. We got a plate
21 number from the security guard. Had he planned on that? He
22 hadn't planned on it. I mean, come on. What are the odds? What
23 are the odds that the security guard would write the plate
24 number? If she doesn't write the plate number, we're probably
25 still looking.

1 And it's true. No matter what they say, how bad
2 our investigation was, that we're telling you lies, that this is
3 a police state, that we want you to convict the wrong person,
4 it's not true. Because if it was true, don't you think we'd just
5 orchestrate our lies just a little bit better? But the fact of
6 the matter is, a trial, an investigation is human. And there are
7 tensions and struggles just like you have in your life. And
8 nothing fits perfect. I wish it would. But you know what, if
9 things would fit perfectly, if they had to be perfectly fit,
10 perfect, then the burden of proof for the State would not be
11 beyond a reasonable doubt. It would be beyond all doubt if that
12 was the way we lived in this world. But we don't. It's not
13 beyond all doubt. It's beyond a reasonable doubt.

14 And this thought that this investigation was
15 flawed, and that we are trying just to get anybody, is ludicrous.
16 We didn't put his print there. Oh, we can't tell the timing of
17 the print. Well, that's true, we can't. Maybe he had it when he
18 was buying some bread and that's a loaf of bread. That's a bunch
19 of hogwash. There's no bread. It's nothing like that. Why is
20 it, looking to the circumstances of that? Why is the print right
21 here? Why is that? Why would it be there if he just touched the
22 bag? It would be a circumstance that was not related to the
23 case, not related at all if, if, and only if that print was
24 somewhere else. But what a coincidence that the print is right
25 here.

1 Is it a coincidence or is it a fact? It's a fact.
2 Is it a coincidence that he happens to be in the video with his
3 dad at the Sam's where he went to just before? Is it a
4 coincidence that he happened to purchase oranges and we find
5 oranges in that little girl's stomach? It's a fact. It's a
6 fact.

7 This thing about the contamination log. They want
8 you to believe that peace officers from the El Paso Police
9 Department, that they somehow spread, like some sort of fairy
10 dust, DNA over this chair. But you know what happened? He
11 didn't think he left anything here. He probably thought that
12 plastic bag caught all the blood. But it didn't. It didn't.
13 It's right here. You can hardly see it. It's right here and
14 right here. It's right here and right here. It's right here and
15 right here. He didn't think we were going to find it. He
16 probably thought after the 20th, he was scot-free. He didn't
17 think we'd find it. And come on, look at this. It's kind of
18 filthy, isn't it? They're never going to find any blood there.
19 Plus, he probably thought it was all in the bag. But it's not
20 true. And only two places on her body, I believe, there are some
21 co-mingling of DNA. Don't get strayed on that.

22 The problem is is we don't know whose it is, or
23 why it's there. Don't misinterpret that evidence. Could it have
24 been the Defendant? It could have been. Could it be someone she
25 touched during the day? It could be. The FBI said there is no

1 way to make a determination. The fact of the matter is, there
2 just is. But if we wanted to lie to you, if we wanted this to be
3 a police state, I guess we'd hide that from you. Wouldn't it be
4 a nice and pretty case if all I had was her DNA there and I don't
5 have to deal with this co-mingling issue? The problem is, is
6 that we tried very hard to identify it. You saw that FBI agent.
7 She's a sharp lady. She knew her business. And as a scientist
8 she could not. But she knew this much. That that little girl's
9 DNA was in the blood, and it was right here, right here, and
10 right here.

11 They spent quite a bit of time talking about
12 footprints and tips and so forth. It's all speculation. All
13 speculation. This is a very good case. You can pass it from one
14 to the other. It's a very good case. She's only 47 inches tall,
15 cute as a little button. You can see her little hands moving in
16 the Wal-Mart. 56 pounds versus someone who's five-seven, 185
17 pounds. And he manhandled her. And he wanted to get away with
18 it. And when he was done, he thought he had hidden all the
19 evidence. But not only did he leave stuff behind, we have him on
20 film. Now, if you don't think this is a cold, methodical killer,
21 you think twice.

22 In my opinion, this is the most damning evidence.
23 He already has gone in and out. When he goes back the second
24 time, don't forget who we're dealing with here, okay. He goes
25 through the extraordinary step of thanking the security guard for

1 not towing him when he's just about, he's just about to take that
2 little girl, he's just about to take her and he knows it. He
3 goes out of his way to do that.

4 He goes in at 1713 on the second time in. He goes
5 out at 1715. On opening I told you that it was 129 seconds. I'm
6 off by 11. 140 seconds, depending on when you count him going
7 in. 140 seconds. We know it's 126 feet from here to here, and
8 the evidence was that it takes 30 seconds, 30 seconds to get from
9 the door to here. You must have been amazed at that, knowing how
10 big those Wal-Marts are. They're huge, huge. That would be clip
11 13 when you look at it.

12 Clip 14 says -- we catch him and the times are off
13 just a little bit because they're using different VCRs and
14 they're just off just a bit. So it won't be tracking the 1713
15 time. I believe this time is like 1710, 1711. But here's the
16 important thing to look at. You see him walk by. And when you
17 get back in that jury room, you go look and count it. He goes
18 this way, and then he goes this way. She walks on this side of
19 the podium, and he pushes his cart on this side. Count the time.
20 I count it to be 48 seconds. I might be off a second or two. But
21 I count 48 seconds. 48 plus 30. I'm not a mathematician, but
22 that's over a minute. I say he's got a minute and 10 seconds, a
23 minute and 10 seconds to somehow lure her out through here.

24 Now, if you ask me, that's a surgical strike. He
25 knows exactly what he's doing. And you know what's even more --

1 you look at this. This is clip 14 that I think is relevant. 13,
2 14, then 15. You look at clip 15 and it is the most telling, if
3 you wonder, why do we have to struggle over the evidence. What
4 was he thinking, because he thought he had destroyed it. Because
5 he's smart. He's cunning. It's diabolical what he's about to do
6 here. And guess what he does. Did you notice this? I'm sure
7 you did. He is about from here -- from that corner to here from
8 that little girl.

9 And you know why he does that? Because what if
10 mama shows up? He just keeps right on walking. And guess what?
11 Just keep on walking. It just didn't work today. Just keep
12 right on walking. I can't stand too close because then mama will
13 say, what are you doing with my little girl. So he leaves a
14 little distance here because he knows. It's a plan. He already
15 left the van running. So he knows he's moving from there to
16 there to the car.

17 And then you've just got to think, why would
18 anybody abduct a little girl on the Sunday before Thanksgiving
19 when the Wal-Mart is the busiest? Why would you do that? Do you
20 know why? Because on a Sunday before Thanksgiving, when
21 everybody is buying their turkeys and whatever, it's full and it
22 is extremely chaotic. And he can take advantage of the chaos.
23 He can take advantage of how busy it is. He knows it. So that's
24 why he hit that day. And if he happens to go fishing, and while
25 he doesn't quite snag them because mom comes along, it was a good

1 day anyway to go hunting.

2 Don't let this killer loose. There's nothing
3 wrong with this case. He said Detective Pantoja -- if they
4 talked to the FBI, if they didn't talk to the FBI, does that
5 affect the quality of this case? Does it come to an issue of
6 importance to you in this case? Does it matter to you if the FBI
7 was physically present there? It does not. Let's say you heard
8 both those officers testify, we did not go to the contamination.
9 We did not. All they got is this contamination log. You get to
10 see everything that happens here. Everything that happens, you
11 got to see it. You get to judge their demeanor, you get to judge
12 whether they're telling you the truth or not. And do you think
13 those officers are lying? They are not.

14 They want you to believe that they went into a
15 zone and somehow, somehow, they got DNA and they put it in here?
16 It can't happen. It can't happen. Because not only can they
17 just sort of spread that little fairy dust, not only can they do
18 that, it has to be blood. Because that's what she said she saw.
19 That's what she tested. She tested blood. And Mr. Segall got up
20 here and said the blood and the DNA are separate. No. No. I'm
21 a lawyer for a very good reason. That's why I'm not a scientist.
22 But I understood this answer from the witness. That you can get
23 DNA from several sources, blood, saliva, your skin, there's a
24 variety of ways. But they're together. Your DNA is in the cell.
25 There's not this little DNA component floating around. So they

1 didn't do that. They didn't come in here and contaminate this.
2 They don't.

3 And that contamination log means nothing and guess
4 what? If this is the police state that he says it is, if this is
5 the farce that he says it is, if this entire process is a farce,
6 we should have just shredded the contamination log. He says,
7 well, I thought the very next day they'd come in with their
8 little contamination log and say, here it is.

9 This is the state of the evidence. No one is
10 making it up. No one is writing it as we go along. You have it.
11 That's it. We could have gone back, I guess, and rewritten it.
12 His suggestion is that's something the State would think about.
13 Let's just write the evidence the way we want it. My guess is, I
14 would rewrite it just a little differently. Because it would be
15 a heck of a lot easier case, wouldn't it? But that's not the
16 state of the evidence. And they've got the chance to
17 cross-examine everyone. They got a chance to test our evidence.
18 That's how you search for the truth in a courtroom. You test the
19 evidence.

20 And you need to go back and, oh, it's been so long
21 ago, but Officer Monday, now there's a guy who knew exactly what
22 he's doing when he got there and took care of his business. He
23 saw her down there. He saw her down there and he took real care,
24 real care over her body because he was looking for prints. He
25 wanted to know, is there any evidence here, and so he took the

1 precaution of watching over her body. After he left it out there
2 lonely in the night, in the cold all by herself, Officer Monday
3 came to protect her, to protect her so that she could tell us her
4 story, so she could tell us what happened.

5 And that's the only reason we found that print.
6 It's the only reason. Did Officer Monday say someone else
7 touched that body? No. Did Officer Monday say he's experienced?
8 He knows what it takes, he knew what he had to do, and he took
9 control. Because that was his responsibility. And so he didn't
10 put her in a black bag so they could transport the body because
11 he was afraid of the moisture. He put a sheet over her. And
12 they had the opportunity to fully cross-examine him. They had an
13 opportunity to fully test the truth of what he was saying.
14 Instead, instead they come from way left field and say, oh, this
15 contamination log, and that means this whole case, just trash
16 this whole case. Trash in, trash out. That's bull. That's
17 bull. This poor little girl, she was lying there and Officer
18 Monday protected her. He put the sheet on her and he protected
19 her. He was very careful.

20 Dr. Contín was very careful. Officer Monday and
21 Dr. Contín see the body, and then, and then he did that superglue
22 process and wow. I mean, it's almost a movie. It's almost a
23 movie. Can you believe it? That little plastic bag. It had a
24 print. It had a print. She still had her story to tell. She
25 wasn't going to go away without telling you what happened to her.

1 It wasn't going to happen. And the El Paso Police Department
2 wasn't going to let it happen, either. And yeah, there were like
3 460 tips, and yes, it was investigated, and there's no evidence
4 before you linking this to anybody else. None. None. None.
5 It's a pipe dream, a rabbit trail somewhere else. They weren't
6 in the same courtroom I was in. It wasn't true.

7 Officer Monday does his job. He's the one that's
8 got to protect this. Don't you know if one of those officers
9 gets too close and just touches this body he's got to explain why
10 that print is there? It's not going to happen. So Detective
11 Martínez and Detective Pantoja, if they got in the van or if they
12 didn't get in the van -- okay, I wish it was cleaner. And I wish
13 we lived lives in straight lines. I wish there were no corners,
14 no crosses, no circles. We just moved forward and in a straight
15 line and life was good. But that's not your life, and it's not
16 my life, and that's not the life of this case.

17 But did it matter? Do you actually believe that
18 those two detectives put the evidence there? That they were
19 skilled enough to somehow manage to put her blood in such minute
20 amounts that it took the FBI to figure out it was there? Do you
21 believe that they did that? Do you honestly think that's true?
22 No, you don't. And don't let them sell you that bill of goods.
23 It's not true, as hard as they tried. It's as if implying that
24 he was trying to stop the little girl from crying, because that
25 would be a reckless act. It's as sound -- that's a theory of

1 stopping as sound as the theory they spread this fairy dust.

2 Is DNA a precise science? It's a great science.
3 When you get back there, you can look at it. You can tell her
4 and then you can tell where it's found. It's good science. It's
5 accurate science, it's science we depend on. It's science that
6 tells a story and you can't misinterpret it. Nobody is coming in
7 here and telling you it's not.

8 I don't think there's any question as to the
9 identity. This is him, and this is his handiwork. This was bad,
10 and this got worse. This is him, and this is his handiwork. And
11 he left her to die.

12 I don't get to go back to the jury room and argue
13 my case again. And if you haven't figured it out by now, I
14 would. I would. And I wish I could go back there and tell you
15 this is what the evidence says and this is what we're trying to
16 tell you. But it's not permitted by the law. And sometimes my
17 mom says that I get way too sarcastic. And so if I did that
18 during argument, I apologize. But in the search of truth and in
19 this courtroom where we'll ask you to do the right thing, to do
20 what is right and just, I might get just a little passionate.
21 But it's important.

22 Because in the final analysis in this case, he's a
23 cold and methodical killer. And every step of the way in this
24 case you can see it. There's planning, there's organization,
25 there's thought. He knows exactly what he's doing. And that's

1 what makes this even a more horrendous case. If it couldn't get
2 any worse, that poor little girl walking down that little toy
3 aisle, and when you see that video -- my guess is you'll see it
4 more than once -- you'll see her little hands kind of free, the
5 innocence of a child. It was bad enough that we had to find her
6 body dead, and it's bad enough that she was out there lonely all
7 night, but what makes this capital murder is not that it's
8 murder, it's that she was under six years of age. And she didn't
9 ask for any of this. A stranger attacked a stranger.

10 Don't let him get away. There's nothing reckless
11 about this conduct. It's all purposeful, it's all thoughtful.
12 It's all planned. It's all organized. He got caught because
13 there was some really great investigation, because the technology
14 and the science allows us to retrieve evidence when never before.
15 Fate gave us some luck because that print wasn't consumed in the
16 fire and we had evidence left over. And hard work and the cold
17 and callous nature in which he committed this offense left him
18 just to miss just a little bit. He slipped just a little bit.

19 In my final minutes I would just ask you to do
20 this. Look real hard at the evidence. It's a serious case.
21 Every time we're in here there are important issues. I want you
22 to take a good, hard look at this. I'm not afraid of you testing
23 my evidence. I have no problems. Take a look at it. Turn it
24 upside down, kick the tires, take a look, jack it up, change the
25 oil. I don't care what you do to it. No matter how you look at

1 it, forward, backwards, up or down, it's all the same. Get on
2 your knees, doesn't matter to me what you do. No matter how you
3 look at it, doesn't matter what vantage point, no matter what
4 theory you think of, it's always going to come to the Defendant.
5 It's always going to come to the Defendant, no matter what you
6 do.

7 And you find him guilty. You find him guilty of
8 capital murder. On your jury charge you sign only one verdict
9 form, and that's Verdict Form A. There isn't any other form, any
10 other verdict form that's proper under the law and the facts in
11 this case. There's none. Take a good hard look at it. You're
12 going to come to the same conclusion. It's guilty of capital
13 murder. Take your time and do what's right. Review the
14 evidence. But do what's just and based on the evidence. I wish
15 you Godspeed.

16 THE COURT: All right, Ladies and Gentlemen,
17 before I allow you to go to the jury room to begin any
18 deliberations, we have made arrangements to take you to lunch.
19 You must remember the instructions you are not allowed to discuss
20 this case among yourselves or allow anyone to discuss it within
21 your hearing. After you come back from lunch, you may only
22 discuss this case when the 12 members of the Jury are present in
23 the jury room by themselves. And I will speak with the
24 alternates after lunch.

25 (Recess at 12:28 p.m.)

1 (After deliberations, Jury and Defendant
2 present, 2:26 p.m.)

3 THE COURT: Has the Jury reached a verdict?

4 PRESIDING JUROR: Yes, we have.

5 THE COURT: Will the presiding juror hand the
6 charge to the Bailiff.

7 Will the Defendant please rise.

8 THE COURT: "We, the Jury, find the Defendant,
9 David Rentería, guilty of the offense of capital murder as
10 charged in the indictment."

11 You may be seated.

12 Do you wish to have the Jury polled?

13 MR. SEGALL: Yes, Your Honor.

14 THE COURT: All right. What I'm going to do, I'm
15 going to ask each and every one of you if what I have read out
16 loud in the courtroom is, in fact, your verdict.

17 Number 1, is this your verdict?

18 JUROR NUMBER 1: Yes, ma'am.

19 THE COURT: Number 2, is this your verdict?

20 JUROR NUMBER 2: Yes, ma'am.

21 THE COURT: Number 3, is this your verdict?

22 JUROR NUMBER 3: Yes, ma'am.

23 THE COURT: Number 4?

24 JUROR NUMBER 4: Yes, ma'am.

25 THE COURT: Number 5?

1 JUROR NUMBER 5: Yes, ma'am.

2 THE COURT: Number 6?

3 JUROR NUMBER 6: Yes, ma'am.

4 THE COURT: Number 7?

5 JUROR NUMBER 7: Yes, ma'am.

6 THE COURT: Number 8?

7 JUROR NUMBER 8: Yes, ma'am.

8 THE COURT: Number 9?

9 JUROR NUMBER 9: Yes, ma'am.

10 THE COURT: Number 10?

11 JUROR NUMBER 10: Yes, ma'am.

12 THE COURT: Number 11?

13 JUROR NUMBER 11: Yes, ma'am.

14 THE COURT: Number 12?

15 JUROR NUMBER 12: Yes, ma'am.

16 THE COURT: All right. Your verdict is accepted.

17 The charge will be filed with the other papers in this case.

18 It's going to take the attorneys some time to
19 organize witnesses for the second phase of this trial. I do need
20 to meet with them to find out how quickly they can get anything
21 organized today. In the meantime, I'm going to send you to the
22 jury room. Now you are going to again be admonished. From here
23 on you are not allowed to discuss the case among yourselves any
24 more until you have heard the evidence from the punishment phase,
25 you've been given the law and the charge by the Court, and the

1 attorneys have made their arguments. And at such time I will
2 release you to begin your deliberations. But now while you're
3 waiting, you are not allowed to discuss the case any more among
4 yourselves.

5 (Jury exits courtroom.)

6 (Recess until September 18, 2003.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

THE STATE OF TEXAS)

COUNTY OF EL PASO)

I, MARIA C. CHAVEZ, Official Court Reporter in and for the 168th District Court of El Paso County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record in the above-styled and numbered cause, all of which occurred in open Court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

WITNESS MY OFFICIAL HAND this the 15th day of

July, 2004.

Maria C. Chavez
MARIA C. CHAVEZ

Official Court Reporter

Certificate No. 2090

Date of Expiration: 12/31/04

602 El Paso County Courthouse

El Paso, Texas 79901

(915) 546-2141

E-mail: machavez@co.el-paso.tx.us